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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-1013

PEGGY J. CONNOR, HENRY J. KIRKSEY, ET AL.,
Petitioners,

v.

HONORABLE J. P. COLEMAN, United States Circuit Judge,
HONORABLE DAN M. RUSSELL, JR., United States Dis-
trict Judge, HONORABLE HAROLD COX, United States
District Judge, and the UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
Respondents.

REPLY BRIEF FOR PETITIONERS

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v. *Petitioners,*

HONORABLE J. P. COLEMAN, United States Circuit Judge,
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REPLY BRIEF FOR PETITIONERS

On May 31, 1977, this Court directed the three-judge District Court in *Connor v. Finch* to devise a new constitutionally sound court-ordered reapportionment plan "with a compelling awareness of the need for its expeditious accomplishment," *Connor v. Finch*, 431 U.S. 407, 426 (1977). In response to their failure to comply expeditiously with this mandate, the respondent Judges in their brief allege (1) that the promulgation of a court-ordered plan by the District Court would cause confusion if the legislature's 1978 statutory plan¹ subsequently gains the approval of the District Court for the District of Columbia in the declaratory judgment action

¹ The Legislature's 1978 statutory plan was enacted in April, submitted to the Attorney General in June pursuant to § 5 of the Voting Rights Act, and the Attorney General lodged an objection to that plan based on dilution of black voting strength on July 31, 1978 (Brief for Petitioners, Appendix C).

brought pursuant to § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, (Response of the Judges, p. 4) and (2) that the deference to legislatively-enacted plans reiterated in *Wise v. Lipscomb*, 46 U.S.L.W. 4777 (U.S. June 22, 1978) (No. 77-529), requires the District Court to stay its hand, (Response of the Judges, pp. 5-6). The respondents further state that they would place a court-ordered plan into effect if (1) the District Court for the District of Columbia disapproves the Mississippi Legislature's statutory plan, apparently even if an appeal is taken by the State, or (2) if the District Court for the District of Columbia fails to decide the § 5 declaratory judgment action by May 7 (Response, p. 5).²

The reasons given by the District Court for staying judgment on a court-ordered plan are inadequate as a matter of law to justify a stay of judgment after more than a year and a half of proceedings on remand in the District Court. First, no confusion would ensue if the judgment on the court-ordered plan clearly states, as prior judgments have stated, that the court-ordered plan would remain in effect only until superseded by a constitutionally sound and § 5-approved legislative plan. Indeed, such alleged confusion would be further minimized if the District Court were to order into effect the district boundaries agreed to by the parties in the *Connor* settlement plan, since that plan is based to a large extent

² On January 2 and January 18, 1979, after our Motion for Leave to File and Petition was filed, the District Court entered orders providing for the filling of five vacancies in the Mississippi Senate and House of Representatives from piecemeal single-member districts carved out of the multi-member districts used in the 1975 court-ordered plan. Copies of those orders are attached hereto. These orders show that piecemeal, *ad hoc*, one-time-only districts are no substitute for a constitutional statewide plan, and that a constitutional statewide plan is long overdue. One vacancy in the House of Representatives still exists created by the election of Representative William Canon to the Senate in the January 27 special election in Lowndes County.

on the statutory plan and retains intact the vast majority of the districts contained in the statutory plan (Brief for Petitioners, p. 10 n. 2).

Second, while *Wise* counsels deference to a valid legislative plan, *Wise* also charges that no such deference is due to a legislative plan which has not been precleared pursuant to § 5 of the Voting Rights Act:

"A new reapportionment plan enacted by a State, including one purportedly adopted in response to invalidation of the prior plan by a federal court, will not be considered 'effective as law,' *Connor v. Finch*, *supra*, at 412; *Connor v. Waller*, 421 U.S. 656 (1975), until it has been submitted and has received clearance under § 5. Neither, in those circumstances, until clearance has been obtained, should a court address the constitutionality of the new measure. *Connor v. Finch*, *supra*; *Connor v. Waller*, *supra*. Pending such submission and clearance, if a State's electoral processes are not to be completely frustrated, federal courts will at times necessarily be drawn further into the reapportionment process and required to devise and implement their own plans." *Wise*, *supra*, at 4779.

Thus, the District Court's tardy failure to comply with the explicit mandate of this Court is based upon a fundamental misreading of this Court's opinion in *Wise v. Lipscomb* which, in its discussion of the duties and responsibilities of the District Court in a § 5-covered jurisdiction, holds just the opposite of what the respondents argue.

The District Court should be directed to enter its court-ordered plan now in order to protect and preserve the rights of the parties to appellate review of that plan prior to the 1979 state legislative elections. The May 7 deadline suggested by the District Court as the fail-safe date after which the District Court would order into

effect a court-ordered plan simply does not provide enough time for an effective appeal to this Court by any aggrieved party. May 7 is only thirty days prior to the qualifying deadline for legislative candidates (Response of the Judges, p. 5). The last appeal in this case—ordered expedited by this Court—took more than six months to complete. Plaintiffs' notice of appeal was filed the same day the final judgment was entered, November 18, 1976. This Court then ordered an expedited briefing schedule and expedited oral argument: briefs on the merits were ordered filed by February 7, 1977, responsive briefs were ordered filed on February 21, and oral argument was ordered for February 28. *Connor v. Finch*, 429 U.S. 1010, 1060 (1977). The Court's opinion was announced May 31.

Further, oral arguments of cases heard during the Term normally are completed in April. Last Term the Court adjourned on July 3. 46 U.S.L.W. 3803. Thus, it is extremely unlikely that if the District Court orders its plan into effect sometime after May 7, 1979 that any aggrieved party would be able to obtain appellate review of that plan in this Court prior to the June 7, 1979 qualifying deadline or the August 7, 1979 legislative primary elections.

Respectfully submitted,

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Attorneys for Petitioners

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3830 (A)

[Filed January 2, 1979]

PEGGY J. CONNOR, ET AL.

Plaintiffs

and

UNITED STATES OF AMERICA

Plaintiff-Intervenors

vs.

CLIFF FINCH, ET AL.

Defendants

CONSENT ORDER

By stipulation and agreement of the parties, it is

ORDERED, ADJUDGED, AND DECREED:

That special elections to fill vacancies in the Mississippi Legislature to be ordered by the Governor of Mississippi shall be ordered in the manner and within the time provided by Mississippi law in the following districts as defined herein:

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Senate Dist.	Components	Pop.	Black Pop.	% Black Pop.
6	LOWNDES COUNTY: All except Air Base Precinct	43,077	15,508	36.00
	Deviation from Norm:	+1.04%		
15A	HOLMES COUNTY: All MADISON COUNTY: Beat 1 Beat 4 Beat 5 YAZOO COUNTY: Beat 4			
	TOTALS DISTRICT 15A	45,726	30,972	67.73
	Deviation from Norm:	+7.25%		
House Dist.				
28	MADISON COUNTY: Beat 1 Beat 4 Beat 5			
	TOTALS DISTRICT 28	19,853	13,351	67.25
	Deviation from Norm:	+9.26%		

ORDERED ADJUDGED AND DECREED on this the
2nd day of January, 1979.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
United States District Judge

/s/ Harold Cox
United States District Judge

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AGREED AND STIPULATED TO:

/s/ Frank R. Parker
Attorney for the Plaintiffs

/s/ A. F. Summer
Attorney for Defendant

/s/ Jeremy L. Schwartz
Attorney for Plaintiff Intervenor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830 (A)

[Filed January 2, 1979]

PEGGY J. CONNOR, ET AL.,
Plaintiffs

UNITED STATES OF AMERICA,
Intervenor

CLIFF C. FINCH, ET AL.,
Defendants

DECREE PROVIDING FOR THE FILING OF
A VACANCY IN THE MISSISSIPPI STATE
HOUSE OF REPRESENTATIVES WHICH
HAS OCCURRED IN DISTRICT 30

This day this three-judge Court was convened, on adequate notice to the parties, to determine how a vacancy in the Mississippi House of Representatives from District 30 should be filled pursuant to a vacancy being caused by the resignation of Representative George Rogers.

Counsel for all parties were present and appeared in open court and made their representations to the Court as to how this vacancy might be filled.

Having heard these representations and having conferred on the matter

IT IS NOW ORDERED, ADJUDGED AND DECREED that the vacancy in District 30 for the election of representatives in the Mississippi Legislature occasioned by the resignation of Representative George Rogers shall be filled as follows:

The Supreme Court of the United States having previously adjudicated that this Court may no longer order elections for multiple-member legislative districts in this state, District 30 as established in our prior decree for the election of legislators in the year 1975 shall be divided into three segments which hereafter shall be known as District 30, District 30A, and District 30B, as follows:

District Components		Unit Pop.	County Pop.	Black Pop.	% Black Pop.
30	Claiborne County:		10,086	7,522	74.58
	All				
	Warren County:				
	Precincts of Redbone, Yokena, Jett & No. 7 Fire Station	8,794	8,794	2,598	29.54
	TOTAL DISTRICT 30		18,880	10,120	53.60
	Deviation: +3.90				
30A	Warren County:	18,539	18,539	5,298	28.57
	Precincts of				
	Goodrum, Jonestown, Tingle, Beechwood, Culkin, Bovina, Oak Ridge, Red- wood, Cedar Grove, King				
	Deviation: +1.44				
30B	Warren County:	17,643	17,643	10,459	59.28
	Precincts of				
	Walters, Brunswick, St. Aloysius, Auditorium, American Legion & Central Fire Station				
	Deviation: -2.9				

Representative Cross, who was elected in 1975, is presently a resident of District 30. Representative Beulow, who was elected in 1975, is presently a representative of District 30A.

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Therefore, a special election shall be called as speedily as possible consistent with the requirements of the applicable provisions of the Constitution of Mississippi and the statutes of said state in District 30B for the election of one member of the House of Representatives who shall serve until January 1, 1980.

The Court wishes it distinctly understood that the sole and only purpose of this decree is to fill a vacancy existing in District 30 as established in 1975 and it is not intended to have, nor does it have, any relevance in any state-wide Court ordered legislative plan which this Court may hereafter adopt, if it should become necessary that the Court enter such a plan. Our purpose is to fill a vacancy existing in a district as established in 1975 and in order that the district court may have the representation to which it is entitled in the presently sitting session of the Mississippi legislature.

This plan does not meet with the approval of all of the parties to this litigation and is intended by the Court in the discharge of its responsibilities in the premises.

SO ORDERED, ADJUDGED AND DECREED at Jackson, Mississippi on this January 2, 1979.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
Chief Judge
United States District Court

/s/ Harold Cox
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830 (A)

[Filed January 18, 1979]

PEGGY J. CONNOR, ET AL.,
Plaintiffs,
and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

—vs.—

CLIFF FINCH, ET AL.,
Defendants,

ORDER DIRECTING SPECIAL ELECTION TO FILL
A VACANCY IN THE MISSISSIPPI HOUSE
OF REPRESENTATIVES

Before COLEMAN, Circuit Judge, RUSSELL, Chief
District Judge, and COX, District Judge.

PER CURIAM:

It being made known to the Court that Jimmie Ray McCalla has resigned his seat from District 1B in the Mississippi House of Representatives

IT IS ORDERED, ADJUDGED, AND DECREED that said vacancy shall be filled by an election to be held from a District described as follows:

Dist. No.	Components	Popu- lation	% Vari- ance	% Black Popu- lation
1B	ALCORN COUNTY: All except the Precincts of Glen, Farming- ton, East Corinth, Rienzi, Biggersville, Bethel, Jacinto, and Union	17,273	-4.94	13.37

The Clerk will provide a certified copy of this Order to Counsel for parties to this litigation and to the Governor of Mississippi, whose function it is to set the date for a special election to fill the vacancy.

A copy of this Order will likewise be furnished the Circuit Clerk of Alcorn County, Mississippi, for the use of the Election Commissioners in said County when the Governor shall have called said special election.

SO ORDERED, ADJUDGED, and DECREED, this the 16 day of January, 1979.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
Chief
United States District Judge

/s/ Harold Cox
United States District Judge